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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,621	09/17/2001	Jerry G. Hodsdon	310048-561	6827

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,621

Applicant(s)

HODSDON ET AL.

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-29, 44-50, 52, 54-75, 77-81, 84-89 and 91-110 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-29, 44-50, 52, 54-75, 77-81, 84-89 and 91-110 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 18, 2005 has been entered.

Rejections Maintained

2. Claims 19-26, 29, 44-45, 47-48, 50, 52, 54-55, 57-62, 65, 67, 69, 71-73, 75, 77, 79-81, 84-85, 87-89, 92 and 94-96 rejected under 35 U.S.C. 102(b) as being anticipated by Grass (4188251) for reasons of record in the last Office Action mailed on September 23, 2005 has been withdrawn in view of the amendment filed on November 18, 2005.

3. Claims 27-28, 49, 56, 63-64, 66, 68, 70, 74, 78, 86, 91 and 93 rejected under 35 U.S.C. 103(a) as being unpatentable over Grass for reasons of record in the last Office Action has been withdrawn in view of the amendment.

Response to Arguments

4. Applicant's arguments filed November 18, 2005 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 19-26, 28-29, 65, 69, 71-72, 73, 77, 79-81, 92, 95-97, 102-103, 105-106 and 110 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrow (6149518).

7. Farrow relates to a label sheet construction (12) comprising a liner sheet (22) and a facestock sheet (34) adhered to the liner sheet (figure-3). The facestock sheet includes at least one cut line (57) therethrough but not the liner sheet to form an entire perimeter of a first label. Figure-1 shows a second label spaced from the first label. The construction includes a weakened line segment (50) in the facestock outside of and extending from the first label to the second label. The line (50) does not extend through the liner as line (63) is optional (col. 6, lines 10-14).

The phrase “capable of” has not been given patentable weight because it is not found to of positive limitation as it only require the ability to so perform. *In re Hitchinson*, 38

USPQ 38.

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8. Claims 44-45, 47-48, 50, 52, 54-55, 57-62, 67, 75, 84-85, 87-88, 89, 98-101, 104 and 107-109 are rejected under 35 U.S.C. 102(e) as being anticipated by Atkinson (6479118).

Atkinson relates to a label sheet construction (10) comprising a liner sheet (figure-2) and a facestock sheet (figure-1) adhered to the liner sheet. The facestock includes at least one cut line (12) therethrough but not the liner sheet (col. 3, lines 9-11) to form a facestock label releasably adhered to the liner sheet and surrounded by a non-label waste portion (figure-1) of the facestock sheet. A first weakened line segment (7) in the non-label waste portion on one side of the label, adjacent to the label and outside of and spaced a distance from the label by a short section of uncut material. The construction includes a second weakened line segment (24) on the opposite side of the label and spaced by a short section of uncut distance (the cut line being of perforations, the uncut portion of the perforation adjacent the label is interpreted to be the short uncut section). This second segment extends from a first edge to a second edge (figure-1) and passes through a portion of the label. The line and second segments extends through the facestock to the liner sheet.

For claim 57, the label sheet in figure-1 shows a third weakened line segment, which interpreted to an extension of the first line segment. Similarly, the fourth line segment is an extension of the second segment.

Regarding claim 67, the liner sheet has no cut or weakened lines directly beneath the label.

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The phrase "capable of" has not been given patentable weight because it is not found to of positive limitation as it only require the ability to so perform. *In re Hitchinson*, 38 USPQ 38.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 49, 56, 63-64, 68, 86, 91, are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson.

Atkinson, as discussed above, fails to teach that the label has a burst configuration. It would have been obvious matter of design choice to modify Atkinson by providing the label to have a shape of a burst configuration for aesthetic appeal, since such a modification involves a mere change in the shape of the label product. A change in shape is found to within the level of ordinary skill in the art.

11. Claims 27, 67, 70, 74, 78, 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrow.

Farrow, as discussed above, fails to teach that the label can be of circular shape. It would have been an obvious matter of design choice to modify Farrow to provide a label

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having circular shape for aesthetic appeal, since such a modification involves a mere change in the shape of the label product. A change in shape is found to within the level of ordinary skill in the art.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claim 65 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The phrase "not being a weakened" is found to be new matter for lack of express support from the specification.

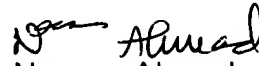
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nasser Ahmad 2/6/06
Primary Examiner
Art Unit 1772

N. Ahmad.
February 6, 2006.